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SECTION E

REQUIREMENTS FOR OTHER AREAS

CHAPTER 9

MAINTENANCE, ISOLATED RURAL, DONUT, AND CLEAN DATA AREAS

MAINTENANCE AREAS

The transportation conformity rule defines maintenance areas as follows:

40 CFR §93.101, as amended by 62 FR 43802, August 15, 1997.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under Section 175A of the CAA, as amended.

In general, conformity requirements for maintenance areas are nearly identical to those for nonattainment areas ([See Section C, Chapter 5](#) and [Section D, Chapters 6-8](#)). The requirements for regional analysis in conformity determinations in maintenance areas are described in the following Section (see Chapters 5-8 for additional information on regional analysis requirements). CO and PM-10 maintenance areas are also subject to project level conformity requirements as discussed in [Section F](#) and [Chapter 10](#).

When an Emissions Budget Is Required

Emissions budgets must be submitted to EPA for approval for all maintenance areas for the last year of the maintenance plan. As with nonattainment areas, all maintenance areas that submit emissions budgets would be allowed to use the budgets for conformity purposes after EPA finds the budget adequate. Under the transportation conformity rule:

40 CFR §93.118(b), 62 FR 43810, as amended, August 15, 1997

Consistency with the motor vehicle emissions budget(s) in the applicable SIP must be demonstrated:

*for each year for which the applicable(and/or submitted) SIP specifically establishes motor vehicle emissions budget(s),
for the last year of the transportation plan's forecast period, and
for any intermediate years as necessary so that the years for which consistency is demonstrated are no more than 10 years apart.*

Regional Emissions Analysis Requirements

Specific requirements for a demonstration of conformity have been established after a maintenance

plan has been submitted. The requirements are summarized in [Exhibit 36](#) on the next page and are discussed in detail below.

When a Maintenance Plan Has Been Submitted

40 CFR §93.118(b)(2), as amended by 62 FR 43811, August 15, 1997

(i) Emissions must be less than or equal to the motor vehicle emissions budget(s) established for the last year of the maintenance plan, and for any other years for which the maintenance plan establishes motor vehicle emissions budgets. If the maintenance plan does not establish motor vehicle emissions budgets for any years other than the last year of the maintenance plan, the demonstration of consistency with the motor vehicle emissions budget(s) must be accompanied by a qualitative finding that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan. The interagency consultation process required by §93.105 shall determine what must be considered in order to make such a finding;

(ii) For years after the last year of the maintenance plan, emissions must be less than or equal to the maintenance plan's motor vehicle emissions budget(s) for the last year of the maintenance plan; and

(iii) If an approved control strategy implementation plan has established motor vehicle emissions budgets for years in the time frame of the transportation plan, emissions in these years must be less than or equal to the control strategy implementation plan's motor vehicle emissions budget(s) for these years.

Maintenance Plan Emissions Budgets

There are different ways (40 CFR, 62 FR 43784, August 15, 1997) to establish one or more maintenance plan emissions budgets for each applicable pollutant or pollutant precursor. These options and the resulting regional conformity test requirements after a maintenance plan has been submitted are as follows:

Example #1: A single emissions budget(s) can be established for the last year of the maintenance plan.

In this case, projected regional emissions for the last year of the maintenance plan must be less than or equal to the emissions budget and a qualitative determination of conformity for the years before the last year of the maintenance plan is also required. This qualitative finding must show that there are no factors that would “cause or contribute to a new violation or exacerbate an existing violation” in the years before the last year of the maintenance plan. The interagency consultation process must also be used to determine what considerations will be used in order to make such a finding.

Projected emissions for years beyond the last year of the maintenance plan must also be less than or equal to the emissions budget for the last year of the maintenance plan under this example. For example, such a budget test would be required in cases where the 20-year transportation plan extends beyond the end of the 10-year maintenance plan.

Exhibit 36
Regional Emissions Tests for Maintenance Areas
(40 CFR §93.109, 93.118, 93.119, as amended by 62 FR 43784, 43807, 43808, 43811, 43812,
Aug. 15, 1997)
(this table does not apply to limited maintenance areas)

Emissions Budget Status	
Emissions Budget	After Submission of Maintenance Plan
1) All maintenance plans must contain an emissions budget.	<p>1) Emissions may not exceed budget for the last year of maintenance plan and for any other year the maintenance plan establishes a budget</p> <p>2) Emissions may not exceed budget for any interim years for which the prior submitted or approved SIP or maintenance plan establishes emissions budgets</p> <p>3) If budgets are not established for any years before the last year of the maintenance plan, a qualitative conformity determination is required for the years before the last year of the maintenance plan</p> <p>4) Emissions for years beyond maintenance time frame must be less than or equal to the budget for the last year of the plan**</p> <p>Conformity determinations are required for:</p> <ul style="list-style-type: none"> a. the last year (forecast year) of the transportation plan's 20-year forecast; and b. if there are more than 10 years between the last year of the maintenance plan and the forecast year, interim determinations are required (i.e. budget test must be met in 10-year or shorter intervals)

*See Section B for discussion of adequacy criteria for emissions budgets.

**Emissions budgets for the years beyond the last year of the maintenance plan may be established. These budgets can be larger than the budget for the last year of the maintenance plan provided offsetting emissions reductions are adopted or committed to in the SIP. Special provisions also apply to isolated rural maintenance areas.

If a submitted adequate or approved control strategy SIP has established emissions budgets for years in the time frame of the transportation plan, emissions in these years must also be less than or equal to the applicable control strategy SIP budgets for the years addressed by those budgets.

Sample Situation: Using a single emissions budget(s) for the last year of the maintenance plan.

► **Maintenance Plan for 2000-2010 with Budget for 2010 and a Control Strategy SIP with Budget for 2005:**

A qualitative finding is required to be submitted with the conformity determination that states that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan (e.g., 2000-2009). Emissions in the year 2010 and beyond must not exceed the budget for 2010. In addition, emissions in 2005 must not exceed the budget for 2005, since the 2005 budgets are not superseded by the new budgets contained in the maintenance plan.

Example #2: Additional emissions budgets can be established for years after the last year of the maintenance plan.

For example, some areas are including emissions budgets for conformity purposes for the last year of the transportation plan (e.g. 2020) in their maintenance plan, even though the initial demonstration of attainment is only required to address 10 years. (In such cases, EPA approval of these budgets does not represent approval of a full 20-year maintenance demonstration. The approved budgets are for conformity purposes only and will be superseded when the second 10-year maintenance plan is submitted).

Under this example, projected emissions must also be less than or equal to the out-year emissions budget for the years for which they are applicable. The only difference between example 1 and example 2 is that under example 2, the budget that applies after the last year of the maintenance plan is the budget established for that year (or the most recent prior year.)

Sample Situation: Establishing additional emissions budgets for years after the last year of the maintenance plan.

► **Maintenance Plan for 2000-2010 with Budgets for 2010 and 2020, and a Control Strategy SIP with Budget for 2005:**

A qualitative finding is required to be submitted with the conformity determination that states that there are no factors which would cause or contribute to a new violation or exacerbate an existing violation in the years before the last year of the maintenance plan (e.g., 2000-2009). Emissions in the years 2010-2019 cannot exceed the budget for 2010. Emissions in 2020 and beyond (if the transportation plan covers years past 2020) cannot exceed the budget for 2020. In addition, emissions in 2005 must not exceed the budget for 2005, since the 2005 budgets are not superseded by the new budgets contained in the maintenance plan.

Some maintenance plans may include vehicle emissions projections for some years other than the last year of the maintenance plan without intending that such projections serve as formal emissions budgets. Unless specifically established as a budget, emissions projections should not be interpreted as budgets, and therefore the budget test is not required for these years. This issue should be addressed through the interagency consultation process during SIP development.

Limited Maintenance Plans

There are some maintenance areas for which no emissions budget is required, based on guidance memoranda issued by EPA.¹ These are called limited maintenance areas and include the following

¹ *Limited Maintenance Plan Option for Nonclassifiable Ozone Nonattainment Areas*, Memorandum from Sally L. Shaver, Director, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Strategies and Standards Division, Nov. 16, 1994. *Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas*, Memorandum from Joseph W. Paisie, Group Leader, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Integrated Policy and Strategies Group, Oct. 6, 1995. [See Appendix J.](#)

categories of maintenance areas:

- # Nonclassifiable ozone areas (including submarginal, transitional and incomplete/no data areas) whose design values are at or below 0.106 ppm (85% of the exceedance levels of the 1-hour ozone NAAQS); and
- # Nonclassifiable CO areas whose design values are at or below 7.65 ppm (85% of the exceedance levels of the CO NAAQS).

Each of the above areas are allowed to submit a limited maintenance plan which does not establish emissions budgets for the area. According to the EPA guidance memoranda, when EPA approves a limited maintenance plan, it:

“...is concluding that an emissions budget may be treated as essentially not constraining for the length of the maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the (CO or ozone) NAAQS would result.”

The guidance memoranda concludes that the emissions budget test is satisfied in areas with approved limited maintenance plans.

No limited maintenance area policy for PM-10 currently exists. There are also other areas (e.g. a CO or PM-10 area dominated by stationary sources) for which it can be demonstrated that vehicle emissions are not a significant contributor to the area's air quality problem. If such a demonstration is made, the maintenance plan is allowed to explicitly state that no emissions budget is being established for conformity purposes.

Mismatch in SIP/Transportation Plan Time Frame

The conformity rule (40 CFR 62 FR 43787, as amended, August 15, 1997) requires that plan/TIP conformity be demonstrated for the entire 20-year time frame of the transportation plan. However, maintenance plans are generally established on 10-year time frames. The emissions budget test must be satisfied in years beyond the time frame of the maintenance plan. Emissions in the years after the maintenance plan must be less than or equal to the emissions budget for the last year of the maintenance plan. Projected emissions must also be less than or equal to any emissions budgets specifically established for additional future years (as described above).

The SIP can establish out-year budgets if so desired beyond the maintenance plan and there is flexibility in existing SIP policy for those years outside of the SIP time frame. These include allowing written commitments for control measure implementation instead of fully adopted measures. EPA is committed to working with nonattainment areas to manage this mismatch issue.

Special Requirements for Isolated Rural Maintenance Areas

In addition to the above requirements, the conformity rule also contains specialized provisions related to conformity determinations for years after the last year of the maintenance plan in isolated rural maintenance areas. These provisions are discussed in the isolated rural area section of this Chapter.

Project Level Analysis Requirements

Project level analysis requirements also apply to CO and PM-10 maintenance areas and are discussed in detail in [Section F](#) and [Chapter 10](#) of this guide.

QUESTIONS AND ANSWERS

Must a maintenance plan contain emissions budgets for years other than the last year of the plan?

No. However, if no budgets are established for the years before the last year of the maintenance plan, a qualitative finding is required to show that there are no factors that would “cause or contribute to a new violation or exacerbate an existing violation” during these years.

If a maintenance plan includes projections of vehicle emissions for one or more years before the last year of the maintenance plan, must those projections be used for emissions budgets and a conformity determination made for each of these years?

No, unless the maintenance plan explicitly states that the projections are considered emissions budgets for the purpose of conformity determinations.. This issue should be addressed during the interagency consultation process prior to developing the maintenance plan.

If EPA finds a maintenance plan’s emissions budget is inadequate, how can an area determine conformity?

Any conformity determination must be based on the prior submitted or approved SIP budget. If no budget exists, then appropriate emissions reduction tests must be applied.

ISOLATED RURAL AREAS

This section reviews the conformity requirements that apply to isolated rural areas. A rural area is an area with a population of less than 50,000 and due to its small size, is exempted from FHWA/FTA's metropolitan planning requirements related to the development of transportation plans and TIPs ². An isolated rural nonattainment and maintenance area is one that does not have a metropolitan transportation plan or TIP *and* where projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. *It does not include so-called "donut" areas that are located outside the metropolitan planning boundary but inside the nonattainment/maintenance area boundary.* Conformity requirements for donut areas are discussed later in this chapter. Isolated rural areas typically exhibit a less locally-oriented planning approach in which the State transportation agency takes the leading role. Transportation projects for such an area must be included in a statewide transportation plan and statewide transportation improvement program (STIP) prior to Federal action to fund or approve such projects.

A single regional emissions analysis that includes all regionally significant projects in the nonattainment or maintenance area can be undertaken to satisfy the conformity demonstration requirements for all projects in isolated rural areas. All regionally significant projects affecting the nonattainment or maintenance area which are contained in the statewide transportation plan and STIP, regardless of funding source, should be included in the regional emissions analysis. The same requirements previously summarized in [Chapters 1](#) and [Section F, Chapter 10](#) for projects not from a conforming TIP/plan are then applied, with the focus on the statewide plan and STIP rather than a local plan/TIP. Isolated rural areas must satisfy the budget and/or emissions reduction tests as other areas; before and during the time frame of submission of an adequate SIP the same requirements apply. However, isolated rural areas have a choice for how conformity is demonstrated for the years after those covered by an adequate SIP. They can use the budget test, the emission reduction test(s), or air quality modeling used in the attainment demonstration or maintenance plan.

Requirements for Isolated Rural Nonattainment and Maintenance Areas

40 CFR §93.109(g), as amended by 62 FR 43808, August 15, 1997

This paragraph applies to any nonattainment or maintenance area (or portion thereof) which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP. This paragraph does not apply to "donut" areas which are outside the metropolitan planning boundary and inside the nonattainment/maintenance area boundary.

(1) FHWA/FTA projects in all isolated rural nonattainment and maintenance areas must satisfy the requirements of §§93.110, 93.111, 93.112, 93.113(d), 93.116, and 93.117. Until EPA approves the control strategy implementation plan or maintenance plan for a rural CO nonattainment or maintenance area, FHWA/FTA projects must also satisfy the requirements of §93.116(b) ("Localized CO and PM₁₀ violations [hot spots]").

² 23 CFR 450 Part 613, 58 FR 58040, Oct. 28, 1993.

(2) *Isolated rural nonattainment and maintenance areas are subject to the budget and/or emissions reduction tests as described in paragraphs (c)-(f) of this section, with the following modifications:*

(i) *When the requirements of §§93.118 and 93.119 apply to isolated rural nonattainment and maintenance areas, references to "transportation plan" or "TIP" should be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the rural nonattainment or maintenance area.*

(ii) *In isolated rural nonattainment and maintenance areas that are subject to §93.118, FHWA/FTA projects must be consistent with motor vehicle emissions budget(s) for the years in the time frame of the attainment demonstration or maintenance plan. For years after the attainment year (if a maintenance plan has not been submitted) or after the last year of the maintenance plan, FHWA/FTA projects must satisfy one of the following requirements:*

(A) *§93.118;*

(B) *§93.119 (including regional emissions analysis for NO_x in all ozone nonattainment and maintenance areas, notwithstanding §93.119(d)(2)); or*

(C) *As demonstrated by the air quality dispersion model or other air quality modeling technique used in the attainment demonstration or maintenance plan, the FHWA/FTA project, in combination with all other regionally significant projects expected in the area in the time frame of the statewide transportation plan, must not cause or contribute to any new violation of any standard in any areas; increase the frequency or severity of any existing violation of any standard in any area; or delay timely attainment of any standard or any required interim emissions reductions or other milestones in any area. Control measures assumed in the analysis must be enforceable.*

(iii) *The choice of requirements in paragraph (g)(2)(ii) of this section and the methodology used to meet the requirements of paragraph (g)(2)(ii)(C) of this section must be determined through the interagency consultation process required in §93.105(c)(1)(vii) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in §93.105(d), which applies for any State air agency comments on a conformity determination.*

Conformity requirements for isolated rural nonattainment and maintenance areas are summarized in [Exhibit 37](#) on the next page. In addition, EPA further explains the conformity requirements in the preamble to the conformity rule.

Paraphrased from 40 CFR, 62 FR 43785-86, August 15, 1997

....Rural nonattainment and maintenance areas with submitted or approved control strategy SIPs or maintenance plans will be allowed to choose among several tests for demonstrating conformity for years after the time period addressed by the SIP: (1) the budget test; (2) the emissions reduction tests ("build/no-build test" and/or one of the 1990 tests, depending on what is required of the area's classification); or (3) air quality modeling.

....an area [may] use the air quality modeling technique it used in its SIP attainment or maintenance demonstration, even if that technique is not dispersion modeling. For example, some SIP attainment demonstrations (most commonly in PM₁₀ areas) are developed using rollback/roll forward techniques

Exhibit 37
Plan/TIP Conformity Requirements for Isolated Rural Areas
(40 CFR §§93.109(c)(4), (g), 93.118, 93.119, as amended by 62 FR 43807-8, 43810-12, Aug. 15, 1997)

Type of Area	Period		
	No Emissions Budget	Adequate Emissions Budget	After time frame of last adequate SIP
Moderate or above ozone area, Moderate CO area with design value greater than 12.7 ppm, Serious CO area	These areas are required to submit a control strategy SIP containing an emissions budget, which must then be used for conformity purposes. If no adequate budget is submitted, a regional emissions analysis must be per-formed that meets the following emissions reduction tests: build/no-build <i>and</i> less-than 1990	Regional emissions analysis meeting emissions budget test (as long as the budget has been found adequate by EPA.	Projects must satisfy one of the following: 1) Regional emissions analysis meeting emissions budget test; 2) Build/no-build and less than 1990 test including NOx in ozone areas, or 3) air quality model as used in last adequate SIP
Rural transport ozone area	Regional emissions analysis meeting build/ no-build <i>or</i> no-greater-than-1990 tests	Regional emissions analysis meeting emissions budget test	
Marginal and below ozone area			
Incomplete data ozone area			
Moderate CO area with design value of 12.7 ppm or less			
Unclassified CO area			
Rural PM ₁₀ area or NO2 area			

based on emissions inventories, and/or chemical mass balance modeling, pursuant to EPA guidance. Where the SIP demonstration correctly used one of these techniques, the conformity determination can use the same technique. EPA will reject SIP budgets during the 45-day review period if such non-dispersion modeling was used inappropriately.

....Areas electing to use the emissions reduction tests to demonstrate conformity for the out years must perform these tests even if the area has received a NO_x waiver.

....EPA is allowing rural ozone areas to substitute the emissions reduction tests for the budget test as a means of demonstrating that these areas are meeting the requirements of Clean Air Act §176(c)(1) that plans, TIPs, and projects not cause or contribute to any new violation, worsen existing violations, or delay attainment of the NAAQS. Therefore, for the same reasons a NO_x waiver cannot exempt an area from the budget test, a NO_x waiver cannot exempt an area from the NO_x emissions reduction tests when these tests are selected as a substitute for existing NO_x budgets.

Conformity Demonstration for Projects in Isolated Rural Areas

Conformity demonstrations for projects in isolated rural nonattainment and maintenance areas are based on a single regional emissions analysis that includes all regionally significant projects in the nonattainment or maintenance area. Subject to the constraints described below, the conformity requirements contained relating to the emissions budget test and emissions reduction tests must be met, based on a regional emissions analysis of the applicable nonattainment or maintenance area portion of the statewide transportation plan and STIP. Some non-MPO areas have adopted Memoranda of Understanding (MOUs) with neighboring MPOs to perform the required regional emissions analysis. Individual project level conformity determinations may also be required as summarized in [Section F, Chapter 10](#).

Conformity Requirements for Isolated Rural Areas That Are Not Required to Submit SIPs

These requirements apply to certain types of ozone or CO nonattainment areas (including both rural and urban areas) that have not submitted a maintenance plan and are not required to submit control strategy SIPs. The areas can include the following:

- Rural transport ozone nonattainment areas,
- Marginal ozone areas,
- Submarginal ozone areas,
- Transitional ozone areas,
- Incomplete data ozone areas,
- Moderate CO areas with a design value of 12.7 ppm or less, and
- Not classified CO areas.

Transportation plans, TIPs and projects located in one of the above areas must be shown to contribute to emissions reductions in all applicable pollutants or pollutant precursors (including NO_x in ozone areas) within the nonattainment area in order to demonstrate conformity. As provided in the transportation conformity rule provisions for areas without motor vehicle emissions budgets, the

emissions reduction test that is applied to ensure this criteria is met can be *either* the build/no-build test or the no-greater-than 1990 emissions level test. The emissions budget test is not applied to plans and TIPs in the above areas *unless* the State or, in rare cases, the MPO voluntarily submits an attainment demonstration and accompanying motor vehicle emissions budget(s). In such a case, the budget test replaces the above emissions reduction test *once the EPA finds the budget adequate for conformity purposes*.

Rural PM-10 nonattainment areas with no emissions budget are subject to the same conformity provisions as discussed above. For these areas, either the build/no-build or no-greater-than 1990 test must be met for the regional emissions analysis.

Requirements for Isolated Rural Areas Once a SIP is Submitted

Isolated rural CO or ozone areas that have submitted a maintenance plan or control strategy SIP are required to meet the emissions budget test once EPA finds the budgets adequate. Areas required to submit control strategy SIPs include moderate and above ozone nonattainment areas, CO nonattainment areas classified as serious or as moderate with a design value of greater than 12.7 ppm, and ozone and CO maintenance areas. Very few rural areas are expected to be included in one of these classifications. However, if nonattainment areas are “bumped-up” to higher nonattainment classifications, they will be required to meet the emissions budget test.

As described previously in [Section B](#), if EPA declares that the submitted emissions budget is adequate, the emissions budget test is to be applied to all conformity determinations for the area.

For years after the attainment year (if no maintenance plan has been submitted) or after the last year of the maintenance plan, one of three possible conformity tests must be met for isolated rural areas. These tests are summarized in [Exhibit 38](#). Under the first alternative, the area can use the last adequate budget for the budget test. (i.e., projected regional emissions must be less than the emissions budget).

Under the second alternative, the area must meet the applicable emission reduction test or tests. Under this alternative, moderate and above ozone nonattainment and maintenance areas would have to do both the build/no-build and the less-than-1990 emissions tests for NO_x *even if* an area has received a NO_x waiver from EPA. Under the third alternative, air quality dispersion modeling or other air quality modeling technique (e.g. rollback modeling) previously used in the attainment demonstration or maintenance plan can be used to demonstrate that the FHWA/FTA project, in combination with all other regionally significant projects expected in the time frame of the statewide transportation plan:

40 CFR §93.109(g)(2)(ii)(C), as amended by 62 FR 43808-09, August 15, 1997

....Must not cause or contribute to any new violation in any areas; increase the severity of any existing violation of any standards in any area; or delay timely attainment of any standard or any required interim emissions reduction or other milestones in any area. Control measures used in the

analysis must be enforceable.

Exhibit 38
Conformity Tests for Isolated Rural Areas for Years After the
Time Period Addressed in the Control Strategy SIP or Maintenance Plan
(40 CFR §93.109 (g)(2), as amended by 62 FR 43808, Aug. 15, 1997)

Options	Nonattainment Classification	Conformity Tests
Emissions budget	All	Regional emissions analysis meeting emissions budget test after EPA finds the budget adequate.
<i>OR</i>		
Emissions reductions	Moderate and above ozone areas, moderate CO areas with design value greater than 12.7 ppm, and serious CO areas	Regional emissions analysis meeting build/no-build <u>and</u> less- than 1990 tests
	All other areas	Regional emissions analysis meeting build/no-build <u>or</u> no-greater-than 1990 tests
<i>OR</i>		
Air quality modeling	All	Air dispersion or other air quality modeling used in the attainment demonstration or maintenance plan <i>and agreed to through the interagency consultation process</i>

As specified in the rule, the test to be used and the methodology selected for air quality modeling must be determined through the interagency consultation process.

93.109(g)(2)(iii), 40 CFR, 62 FR 43809,, August 15, 1997

The choice of requirements in paragraph (g)(2)(iii) of this section and the methodology used to meet the requirements of paragraph (G)(2)(ii)(C) of this section must be determined through the interagency consultation process required in §93.105(c)(1)(vii) through which the relevant recipients of title 23 U.S.C. or Federal Transit Laws funds, the local air quality agency, the State air quality agency, and the State department of transportation should reach consensus about the option and methodology selected. EPA and DOT must be consulted through this process as well. In the event of unresolved disputes, conflicts may be escalated to the Governor consistent with the procedure in §93.105(d), which applies for any State air agency comments on a conformity determination.

QUESTIONS AND ANSWERS

Are all rural areas exempt from the motor vehicle emissions budget test?

No. Areas that have adequate or approved budgets must meet the budget test, except for certain flexibility for the years beyond the budget (see Exhibit 38). Areas that are required to submit control strategy SIPs are: moderate and above ozone areas; CO areas classified as serious or as moderate with a design value of greater than 12.7 ppm; and PM-10 areas. In addition, other areas can choose

to voluntarily submit a motor vehicle emissions budget.

Can a rural area choose to submit a motor vehicle emissions budget to EPA for approval and use the emissions budget test immediately for conformity determinations?

No. A submitted emissions budget cannot be used for conformity determinations until it has been declared adequate by EPA.

An isolated rural area is allowed to use the results of air quality modeling to demonstrate conformity for years after the time period addressed in the SIP. Have specific modeling procedures been developed or are they being developed for this purpose?

The type of modeling procedures to be used for a particular area must be determined through the interagency consultation process required in 40 CFR §93.105(c)(1)(vii), as amended by 62 FR 43805, Aug. 15, 1997.

How can regional emissions tests be applied to a project in a rural isolated area when no network models exist in the area?

Estimates of vehicle miles traveled (VMT) based on HPMS or locally-approved traffic counts and speed will need to be developed for vehicle travel in the area for both the baseline and action scenarios for the applicable analysis year(s). These data can then be used to generate regional emissions estimates for each scenario, which in turn will be used to perform the required motor vehicle emissions budget or emissions reduction tests.

DONUT AREAS

Transportation conformity requirements that apply to “donut” areas are discussed below. As defined in the preamble to the 1993 conformity rule,

40 CFR, 58 FR 62207, November 24, 1993

Areas which are outside the MPO boundary but inside the boundary of a nonattainment or Clean Air Act section 175A maintenance plan area that is dominated by a metropolitan area (“donut areas”).

Requirements for Donut Areas

Conformity determinations by an MPO must consider emissions from all projects in the nonattainment or maintenance area, including projects located in a donut area. Thus, the metropolitan planning process must address the donut area in some manner during the development of a plan, TIP, and regional emissions analysis.

Given this background, possible options for donut area project conformity analysis and determinations are presented below. The details shown below are largely based on guidance regarding donut areas that is contained in the preamble to the 1993 conformity rule.

40 CFR, 58 FR 62207, 62208, November 24, 1993

....Because an MPO must consider in its regional analysis of transportation plans and TIPs all highway and transit projects in the nonattainment or maintenance area, the MPO and State DOT may choose to include donut area projects in the transportation plan/TIP. In such cases, no further regional analysis of such projects would be necessary.

If projects in donut areas are not specifically included in the transportation plan/TIP, the project level conformity determination would have to document that such projects were included in the original regional emissions analysis used to demonstrate conformity of the existing transportation plan/TIP. Another option is to perform a complete new analysis in which the project is hypothetically assumed to be added to the transportation plan/TIP, and the combination is tested to see if it would satisfy all the conformity criteria for transportation plans and TIPs. If it would, the project may be found to conform. EPA notes that this re-analysis must use the latest planning assumptions and emissions model which may have changed since the TIP was adopted..

Of the three options, EPA believes that all parties involved will be better served by pursuing the first or second option. (emphasis added)

The transportation conformity rule also requires that the interagency consultation process³ as discussed in [Chapter 2](#) and defined in the conformity SIP be used for conformity determinations in donut areas.

³ 40 CFR §93.105(c)(3), as amended by 62 FR 43805, Aug. 15, 1997.

Options for Regional Emissions Analysis in Donut Areas

In cases where different boundary definitions do exist, there are three options for conducting conformity determinations for donut area projects as part of an overall regional emissions analysis. These options are discussed in the preamble language above and summarized in Exhibit 39. The particular analysis option to be used in each donut area will be determined through the interagency consultation process.

Exhibit 39
Regional Emissions Analysis Options for Donut Area Projects

Option <i>(to be determined through the interagency consultation process)</i>	Action
1. Include all donut area projects in the transportation plan/TIP	No further regional analysis of the projects is necessary because the donut area projects were included in the conformity analysis for the plan/TIP.
2. Include all donut area projects in original regional emissions analysis used to demonstrate plan/TIP conformity	Document that such projects were included in regional emissions analysis.
3. Perform applicable conformity tests based on hypothetical assumption that donut area project is added to plan/TIP and use analysis procedure for adding projects to the plan/TIP	Redo regional emissions analysis using latest planning assumptions and emissions models, which may have changed since the TIP was adopted.

It is recommended that the regional emissions analysis options in Exhibit 39 be used whenever possible, in order to minimize the resources needed to conduct the analysis and ensure consistency of results between the MPO and donut areas.

QUESTIONS AND ANSWERS

Is a project that is located in a donut area subject to conformity requirements?

Yes, a conformity determination and regional emissions analysis is required for projects in donut areas, as described above. In addition, a project level conformity determination must be performed on all regionally-significant projects that are located in donut areas contained in CO or PM-10 nonattainment or maintenance areas.⁴ Such projects also need to be included in the STIP and complete all NEPA requirements prior to funding or implementation.

When a regionally-significant project is located in a donut area, the municipality for that area has its own transportation model, and the MPO has a regional transportation model (with

⁴ 40 CFR §§93.116, 93.123, as amended by 62 FR 43810, 43815, Aug. 15, 1997.

little or no detail for the donut area municipality), how should regional conformity and related hot-spot analysis for that project be performed?

First of all, the interagency consultation process should be used to decide which modeling approach should be used. If possible, the project should be included in the plan/TIP and the MPO should include it in the regional conformity analysis.

In addition, if the project is located within a CO nonattainment area, a quantitative hot spot analysis must be performed to ensure that the analysis does not exceed the NAAQS for CO. A qualitative hot-spot finding is required in PM₁₀ areas, however. The travel data to be used in the analysis should come from the more detailed model (either the donut area model or the MPO model). However, if that data comes from the donut area model, the volumes used in the hot-spot analysis should be compared with those used in the regional analysis of the TIP (the MPO model) to ensure that the volumes are consistent.

Do the conformity examples included in the rule for “isolated rural” nonattainment and maintenance areas apply to donut areas?

No. *The rule does not consider donut areas to be isolated rural areas*, since projects in such donut areas must be considered in the context of the MPO’s plan/TIP. In addition, the ISTEA metropolitan planning requirements state that the MPO boundaries must be expanded to include the entire nonattainment area.

A regionally-significant project has been proposed in a donut area for which no forecasts of travel activity are available. How can conformity be determined for the project?

Interagency consultation between the MPO and the State department of transportation is to be used to determine the cooperative planning and analysis process that will be used for the conformity determination. The actual process that is used is likely to depend on whether the MPO has network modeling capability to include the estimated impacts of the project. If so, the network modeling capabilities must be used. If the network modeling requirements do not apply then the transportation conformity rule (40 CFR §93.122[a][7], as amended by 62 FR 43814, Aug. 15, 1997) calls for “reasonable methods” for VMT estimation on off-model network roadways within the urban transportation planning areas and roadways outside the urban transportation planning area.

CLEAN DATA OZONE AREAS

Requirements for Clean Data Areas

As defined in the conformity rule, clean data means:

40 CFR §93.101, as amended by 62 FR 43802, August 15, 1997

Clean data means air quality monitoring data determined by EPA to meet the requirements of 40 CFR part 58 that indicate attainment of the national ambient air quality standard.

The transportation conformity rule provides additional flexibility for clean data ozone areas as discussed below.

40 CFR §93.109(c)(5), as amended by 62 FR 43807, August 15, 1997

Notwithstanding paragraphs (c)(1) and (c)(2) of this section, moderate and above ozone nonattainment areas with three years of clean data that have not submitted a maintenance plan and that EPA has determined are not subject to the Clean Air Act reasonable further progress and attainment demonstration requirements must satisfy one of the following requirements:

- (i) The emissions reduction tests as required by §93.119;*
- (ii) The budget test as required by §93.118, using the motor vehicle emissions budgets in the submitted control strategy implementation plan (subject to the timing requirements of paragraph (c)(1) of this section); or*
- (iii) The budget test as required by §93.118, using the motor vehicle emissions of ozone precursors in the most recent year of clean data as motor vehicle emissions budgets, if such budgets are established by the EPA rule making that determines that the area has clean data.*

Paraphrased from 40 CFR, 62 FR 43784-5, August 15, 1997

....Moderate and above ozone nonattainment areas which EPA declares through rulemaking to be “clean data areas” under the May 10, 1995 policy⁵ could request that a budget based on the level of motor vehicle emissions in the most recent year of clean data be established through that EPA rulemaking process. See the May 10, 1995 memorandum for more information about these types of areas.

...EPA recognizes there are clean data areas for which EPA has already completed rulemaking under the May 10, 1995, memorandum. If these areas are not subject to a control strategy SIP, they have the choice of using either the build/no-build or no-greater-than 1990 test, or the budget test if they decide to create one through the SIP process. Again, if such areas choose to submit a SIP budget, they have the option of basing the budget on a demonstration of clean data (rather than modeling) and the budget could be the motor vehicle emissions in the most recent year of clean data.

⁵ Reasonable Further Progress, Attainment Demonstration, and Related Requirements for Ozone Nonattainment Areas Meeting the Ozone National Ambient Air Quality Standards, Memorandum from John S. Seitz, Director, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, May 10, 1995.

A clean data area is further defined as a moderate or above ozone nonattainment area that has three years of valid ozone monitoring data that demonstrates attainment of the ozone NAAQS and *has been declared through EPA rulemaking to be a clean data ozone area.*

Conformity requirements for clean data areas that are not required to submit SIPs per EPA rulemaking are summarized in Exhibit 40. As shown in the Exhibit, clean data areas are allowed to choose one of three options to demonstrate conformity.

Exhibit 40
Conformity Tests for Clean Data Areas
(40 CFR§93.109 (c)(5), 62 FR 43807, as amended, Aug.15, 1997)

Clean data areas can use *any one of the following tests* to determine conformity:

1. Use one of the following emissions reduction tests: build/no-build or no-greater-than 1990; or
2. Submit an emissions budget to EPA for approval through the SIP process, and apply the motor vehicle emissions budget test after EPA finds the budget to be adequate; or
3. Request that a budget be established through EPA rulemaking that uses the motor vehicle emissions in the most recent year of clean data as the budget. Then, after EPA finds the budget to be adequate, comply with the requirements for the emissions budget test.

QUESTIONS AND ANSWERS

An EPA-approved clean data area is allowed to use the motor vehicle emissions in the most recent year of clean data as a motor vehicle emissions budget. Must EPA approve this motor vehicle emissions budget before it can be used for transportation conformity purposes?

Yes. An emissions budget for conformity purposes in clean data areas can only be established through the EPA rulemaking that determines an area has clean data. Alternatively, an area can submit an emissions budget to EPA for approval as part of the regular SIP revision rulemaking process and that budget can be used after EPA has made an adequacy determination (40 CFR, 62 FR 43785, Aug. 15, 1997). Clean data areas may also use the emissions reduction test flexibility as shown in Exhibit 40 above, if an adequate budget does not exist.

Can an area for which EPA has already completed a clean data rulemaking use the motor vehicle emissions in the most recent year with clean data as an emissions budget?

No, the area cannot use the budget for transportation conformity purposes unless the area establishes an emissions budget through the SIP process. However, the area can choose to submit a SIP budget

and base the budget on a demonstration of clean data (rather than modeling). In such a case, the budget can be the motor vehicle emissions in the most recent year of clean data.

If an approved motor vehicle emissions budget is based on clean data, what happens if subsequent years have NAAQS violations?

If a budget was established through the SIP process, the EPA can issue a SIP call. If the SIP has not yet been approved, EPA can declare the submitted budget inadequate during the adequacy review. EPA also has the ability to disapprove a submitted SIP based on clean data if violations occur prior to approval. Under any of these scenarios, the area will need to submit a SIP revision containing a new emissions budget.